

JUL 18 1976

No. 75-1757

MICHAEL RODAK, JR., CL

**In the Supreme Court of the United States**

OCTOBER TERM, 1976

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**MICHAEL PATRICK CLANCEY, PETITIONER**

v.

**UNITED STATES HOUSE OF REPRESENTATIVES, ET AL.**

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**ON MOTION FOR LEAVE TO FILE AND PETITION  
FOR WRITS OF PROHIBITION AND MANDAMUS**

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**MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION**

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**ROBERT H. BORK,**  
*Solicitor General,*  
*Department of Justice,*  
*Washington, D.C. 20530.*

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Petitioner, apparently invoking the original jurisdiction of this Court, seeks writs of mandamus and prohibition to compel the United States House of Representatives to vacate the rule of the House Code of Official Conduct under which Congressman Andrew J. Hinshaw, Representative from the 40th Congressional District of California, allegedly has been prevented from voting or otherwise participating in congressional matters (Pet. 3).

This Court lacks jurisdiction to grant the relief. The suit satisfies none of the jurisdictional requirements of 28 U.S.C. 1251 and thus is not cognizable as an original case. The writs cannot be justified as in aid of the Court's appellate jurisdiction since the relief they seek does not relate to any pending litigation in the lower courts. Cf. *Chandler v. Judicial Council*, 398 U.S. 74, 86; see *Marbury v. Madison*, 1 Cranch 137.

If petitioner wishes to challenge the validity or application of a particular rule of the House of Representatives and to seek to enjoin its enforcement, the proper procedure is a suit in the district court.<sup>1</sup>

It is therefore respectfully submitted that the motion for leave to file and the petition for writs of prohibition and mandamus should be denied.

ROBERT H. BORK,  
*Solicitor General.*

JULY 1976.

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<sup>1</sup>That was the procedure followed in *Powell v. McCormack*, 395 U.S. 486, upon which petitioner relies (Pet. 2-3). There this Court exercised its appellate jurisdiction to review the judgment of the court of appeals denying a Congressman's claim that he had been unlawfully excluded from the House of Representatives.